

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





76-1574

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

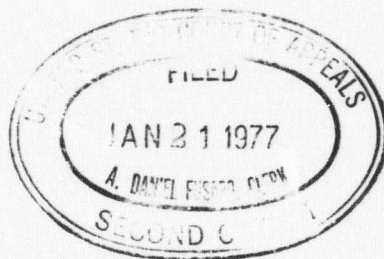
UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-  
EDWARD MAULDIN,  
Defendant-Appellant.

Bp/s

Docket No. 76-1574

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
EDWARD MAULDIN  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

SHEILA GINSBERG,  
Of Counsel.



PAGINATION AS IN ORIGINAL COPY



OFFENSE PO ☐ JUDGE ~~XXXXXX~~ Assigned U.S.  
OFFENSE MO ☐ 0843 vs.  
MEANOR M's ☐ 0208 1  
FELONY Fel ☒ District Office

MAULDIN, EDWARD JR.

(LAST, FIRST, MIDDLE)

REC 31 1976  
A. DANIEL FISHER, CLERK  
SECOND CIRCUIT  
JUVENILE \* 01

76 0382 A 01

Yr. | Docket No. | Def.

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18:2113 (a)	Bank robbery	1
18:2113 (b)	Bank larceny	2
18:2113 (d)	Assault & jeopardy of life in bank robbery.	3

12/14

SUPERSEDING COUNTS

U.S. MAG. CASE NO.

BAIL • RELEASE

☐ AMT ☐ Fugitive  
☐ Denied ☐ Set ☐ Pers. Recog.  
☐ PSA

S 000 conditions

Date ☐ 10% Deposit  
☐ Surety Bond  
☐ Collateral  
☐ Bail Not Made  
☐ Status Changed (See Docket) ☐ 3rd Prty Cust ☐ Other

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began 4-15-76 Summons Served First Appearance	High Risk Date 4-15-76 Indict. Waived. In Charging District Superseding Indict/info	4-22-76 1st Plea 4-22-76 Final Plea	Trial Set For Voor Dire Trial Began 11-8-76 Trial Ended 11-9-76

SENTENCE

Disposition of Charges  
11-9-76

12-10-76

☒ Convicted ☒ On All Charges  
☐ Acquitted ☐ On Lesser Offense(s)  
☐ Dismissed: ☐ WOP: ☐ WP  
☐ On Government's Motion

MAGISTRATE		DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME:
Search Warrant	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Summons	Issued			Date Scheduled		
Arrest Warrant Issued	Served			Date Held		
COMPLAINT				REMOVAL HEARING		HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW:
OFFENSE (in Complaints)				WAIVED NOT WAIVED	Tape Number	
				INTERVENING INDICTMENT		

U.S. Attorney or Asst. **Jeremy G. Epstein** 791-0036 219

ATTORNEYS **Jack Lipson LAS** -454 PD

Defense: ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None ☐ Other ☐ PD ☐ CD

Show last names and suffix numbers of other defendants on same indictment/information.

DATE	DOCUMENT NO.	PROCEEDINGS
4-15-76		Filed indictment.
4-22-76		Deft. produced on writ (Atty. present) enters a plea of not guilty. 10 days for motions. Deft. ordered F/P. Bail fixed in the amount of \$10,000 cash or surety. Assigned to Cannella, J. Briant, J.
8-18-76		Filed Government's notice of readiness for trial.
10-6-76		Filed Affidavit of Jeremy G. Epstein, AUSA in support of writ. RET: 10-12-76.
11-4-76		Filed Govts memorandum in support of the admission of a similar act by the deft.
11-4-76		Filed Govts requests to charge.

EXCLUDABLE DELAY (a) (b) (c)

53 C.

— OVER —



OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3151(b)

DATE	76Cr.382 JMC DOCUMENT NO.	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY				Fu Pr at U A
				Interval Between (a)	Start Date End Date (b)	Ltr Code (c)	Total Days (d)	
11-8-76		Deft. produced in Court on a writ....TRIAL BEGUN with a Jury before Cannella, J.						A.
11-9-76		Trial cont d. and concluded-Deft. Guilty on each of cts. 1.2.3. Deft moves to set aside the verdict...Denied..P.S.I. ordered sent. adjd Sine Die...Writ adjd. to 11-16-76...Cannella, J.....						
12-10-76		Filed Judgment (Atty. Jack Lipson, present) the deft is committed as a Youth Offender for treatment and supervision pursuant to Section 5010(b) of Ti.18, U.S. Code until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Section 5017(c) of Ti.18, U.S. Code...Sentence to run CONCURRENTLY with the sentence imposed by Judge Whitman Knapp in 75Cr.399... Wyatt, J.....Ent. 12-13-76----						B. C. D. E. F.
		Issued commitment and copies.....						
12-14-76		Filed Notice of Appeal from judgment entered 12-10-76. (mailed copies)						G.
12/21/76		Transcript of record of proceedings dated 11/3/76						H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

JGE:ow  
d-522

76 CRIM. 0382

B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

- v - :

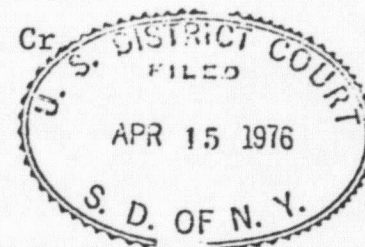
EDWARD MAULDIN, JR., :

Defendant. :

-----x

INDICTMENT

76 Cr



The Grand Jury charges:

On or about the 16th day of January, 1975, in the Southern District of New York, EDWARD MAULDIN, JR., the defendant, unlawfully, wilfully and knowingly, by force and violence and by intimidation, did take from the person and presence of another property and money in the approximate amount of \$20,600.00 belonging to, and in the care, custody, control, management and possession of the North New York Savings Bank, 210 East 188th Street, Bronx, New York, a bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and 2.)



SECOND COUNT

The Grand Jury further charges:

On or about the 16th day of January, 1975, in the Southern District of New York, EDWARD MAULDIN, JR., the defendant, unlawfully, wilfully and knowingly, and with intent to steal and purloin, did take and carry away property and money in the approximate amount of \$20,600.00 belonging to, and in the care, custody, control, management and possession of the North New York Savings Bank, 210 East 188th Street, Bronx, New York, a bank the deposits of which were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(b) and 2.)

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THIRD COUNT

The Grand Jury further charges:

On or about the 16th day of January, 1975, in the Southern District of New York, EDWARD MAULDIN, JR., the defendant, unlawfully, wilfully and knowingly did assault and put in jeopardy the life of various persons by the use of a dangerous weapon, to wit, a firearm, while committing the offenses described in the First and Second Counts of this indictment.

(Title 18, United States Code, Sections 2113(d) and 2.)

Rocco Mauldin  
FOREMAN

Robert B. Fiske, Jr.  
ROBERT B. FISKE, JR.  
United States Attorney



76 CRIM 0382

Form No. USA-32a-274 (Ed. 8-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

EDWARD MAULDIN, JR.,

Defendant.

INDICTMENT

76 Cr.

18 U.S.c. §§ 2113(a) 2113(b)  
and 2113(d).

ROBERT B. FISKE, JR.

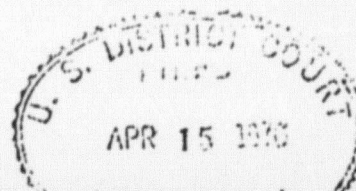
United States Attorney.

A TRUE BILL

*Rocco Marand*

Foreman.

FPI-SS-2-19-71-20M-6950



JUDGE CANNELLA

4-15-76 Indictment filed. (Lester)

4-22-76 Deft produced on a writ (att  
Jack Lipson present. Deft enters a N/A plea  
Case assigned to Judge Cannella for  
all purposes. 10 days for Matrimon.  
Deft ordered T/P. Bail fixed in the  
amount of \$10,000 Cash or Surety. XMR  
~~Deft Remanded in custody.~~

Received J

NOV 8, 1976

DEFT. PRODUCED IN COURT ON A WRIT  
TRIAL BEGUN BEFORE CANNELLA, J.  
WITH A JURY. -

NOV 9 - 1976

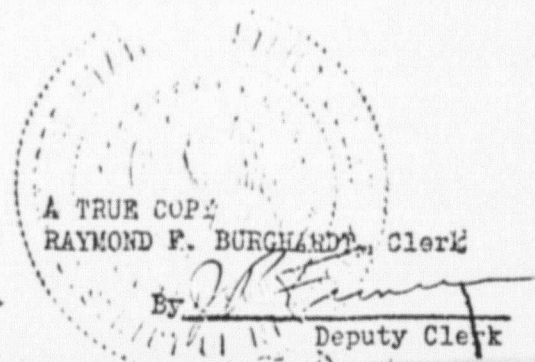
TRIAL CONTINUED AND  
CONCLUDED - JURY VERDICT - DEFT. GUILTY  
ON EACH OF COUNTS 1-2 & 3.  
JURY POLLED - JURY EXCUSED  
DEFT. MOVES TO SET ASIDE THE VERDICT - JURY  
PST ORDERED - SENT. ADJUDICATED SINCE DEC.  
WRIT ADJUDICATED TO 11-16-76

CANNELLA J.



12/10/76 -- Dept. (Produced in int.) present w/ Hy. Jack Hipson +  
AUSA Jeremy Epstein. Dept. is committed as a youth offender  
for treatment + supervision under Section 5010(b) of Title 18  
USC until discharged by the Fed. Youth Correction Div. of  
the Board of Parole supervised in Section 5017(c), 18 USC  
sentence to run concurrently w/ sentence imposed  
by Judge Knapp in 75G-399.

W. J. [unclear]  
(Signature) [unclear]



C

CHARGE

THE COURT: We now get to the point where the  
Court addresses you on the law. Is there anyone that wants



2 a five minutes recess before we continue on?

3 THE COURT: At the outset, I want to thank  
4 you for the careful attention you paid to this case. I  
5 noticed that you did follow the witnesses in their  
6 testimony and also the lawyers in their arguments.

7 I also thank Mr. Epstein and Mr. Lipson for  
8 the manner in which they have presented the case. I  
9 already alluded to this before and I think it shows a  
10 great deal of study on their part and good judgments made  
11 in this area. They have **assisted me, I know, and I thanked**  
12 **them and I am sure they assisted you and therefore I thank**  
13 **them on your behalf.**

14 I will not talk about the facts to any extent  
15 because they are very simple. We heard them only a short  
16 time ago and both lawyers have alluded to them. We know  
17 the one incident involved here and which is your main  
18 concern, is the incident of January 16, 1975 in the bank  
19 up in the Bronx and you know there were three persons  
20 involved in that case and you heard the witnesses testify  
21 as to what happened.

22 The case was presented to the grand jury and  
23 they came down with this indictment. So you will under-  
24 stand this a little better, I will put on the blackboard  
25 what the three charges are that are in this indictment



2 and by the way you will be able to look at this in the  
3 jury room because you will have a copy of it -- so you  
4 can follow me while I tell you what the law is and give  
5 certain definitions with regard to words mentioned in  
6 the statutes.

7 The indictment is predicated upon the law  
8 passed by Congress which is contained in Title 18 of the  
9 United States Code and the section is number 2113 and it  
10 is labelled Bank Robbery and Incidental Crimes. Then  
11 it contains a number of sections and count 1, for example,  
12 is concerned with Section 2113(a) and 2113(f). I have  
13 labelled count 1 using shorthand, bank robbery by  
14 intimidation and force. Everytime I use that expression,  
15 this is the part of the section of the law we are talking  
16 about. This is what Congress passed, subdivision A,  
17 "Whoever by force and violence or by intimidation takes  
18 from the person or presence of another, any money be-  
19 longing to or in care or the custody, control, manage-  
20 ment or possession of any bank, commits a crime."

21 Everytime I use that short form expression,  
22 I am talking about that section.

23 Now, the bank mentioned in that section A is  
24 described in another portion of the law and that portion  
25 says that if the bank is insured by the Federal Deposit



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2 Insurance Company, that is the kind of a bank they are  
3 talking about.

4 The second count in the indictment is predi-  
5 cated on 2113 Subdivision B which immediately follows  
6 this and the shorthand I use in this section is bank robbery  
7 by larceny, and when I refer to that I am talking about  
8 that portion of the statute which reads, "Subdivision B,  
9 whoever takes and carries away with intent to steal or  
10 purloin any money exceeding \$100 in the care, custody,  
11 control, management or possession of any bank, commits  
12 a crime," and there again, that must be a FDIC bank.

13 The third count is also bank robbery and my  
14 shorthand for that is bank robbery assault-jeopardy, and  
15 when we talk about that section, we refer to this law  
16 passed by Congress, "Anyone in committing any **offense**  
17 defined in what is described here as subdivision A and B,"  
18 and in this case it means either 1 or 2, "assaults any  
19 person or puts in jeopardy the life of any person by  
20 the use of a dangerous weapon or device, commits a federal  
21 crime," so if you come to the point where you are per-  
22 suaded the defendant did not commit either 1 or 2 or  
23 both, if he did not commit that and you find him not  
24 guilty of that, you never get to 3, because before you get  
25 to 3 he must be convicted of either one of the other or



or both of these two counts.

Now, we will get to the elements of these counts, what does the Government have to prove by credible evidence beyond a reasonable doubt as to count 1, for example; that on January 16, 1975 in the North New York Savings Bank that bank was insured by the Federal Deposit Insurance Corporation.

That is the first element.

Two, that on the same date the defendant took, and in this case he did not physically take the money himself and that is not the charge. The charge is that he aided and abetted the other two in taking it, and I will describe that later to you when I go through the definition of these terms, \$20,000 plus or minus and that was taken -- the language of the statute is three or four words and I will only use one, "care, custody, control, management or possession."

The Government does not have to prove all of these, it must prove only one. I would use the word "possession" and I don't think there is any dispute that that money was in the possession of the bank put there properly by deposits.

The third element is, it was taken from the presence or person of another and the tellers, the people



1  
2 in the bank are persons for this purpose. The money was  
3 taken from the drawer but they were there and that is  
4 what this requirement is; and that the taking was  
5 accomplished by the use of force, violence or intimi-  
6 dation.

7  
8 Here again, the Government does not have to  
9 prove both of them. It can prove either one or both and  
10 that is there was either force used and violence or there  
11 was intimidation.

12  
13 Lastly, that the defendant acted unlawfully,  
14 knowingly and willfully.

15  
16 The elements for count 2. The first element  
17 is exactly the same. The second element is exactly  
18 the same. The third element is that the money was taken  
19 with intent, and this crime requires a specific intent,  
20 you can't commit this crime by accident or mistake. You  
21 have to intend it. To steal or purloin the money.

22  
23 Four, the requirement is that the amount if  
24 over \$100. and here it is undisputed, the audit showed  
25 the amount was \$20,000 plus.

26  
27 If you find the defendant is guilty of count 1  
28 or count 2 or both, then you come to count 3 and the  
29 requirement for count 3 is that while the crime that you  
30 find him guilty of was being perpetrated, if in fact you



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so find, that during that time there was an assault on some person or some persons were put in jeopardy of their lives by the use of a dangerous weapon or device and if you find that, then he would also be guilty beyond a reasonable doubt. If you find that, he would also be guilty of this third crime.

That means that count 1 or 2 or both plus assault or jeopardy and that simply put are the various elements concerning this particular incident we are involved with here.

It is very clear from listening to the lawyers in the case that there are many areas of agreement between them. On the other hand, there are areas of disagreement, and it is because of the fact there are areas of disagreement that you have been selected. You are the judges of the fact just the same as if you would be wearing a robe at this time, just as much a judge as I am in that area.

I am, of course, the judge of the law. As far as the facts are concerned, you are not to accept the facts from the Court, the lawyers or anybody else, but you find the facts yourself. Nobody can tell you what the facts are. You are the sole and sovereign judges of the facts.



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You are also the sole and sovereign judges of the credibility of any of the witnesses in this case. On questions of law you must accept them from the Court and apply them to the facts as you find them.

We know, of course, the grand jury indicted this defendant and accused him of these three crimes and that he at some point in time pleaded not guilty to each one of them, therefore that puts into issue every material fact as to each one of these three counts, these three charges.

The burden of proving the defendant's guilt is upon the Government for the very simple reason that the defendant in every criminal case and in this case is presumed innocent unless and until the Government satisfies you of his guilt by credible evidence beyond a reasonable doubt.

The burden of proof never shifts to the defendant. There is no requirement on his part to prove his innocence. There is a requirement on the part of the Government to satisfy you by credible evidence beyond a reasonable doubt before you may convict a defendant as to any one of these three charges.

The tool used by the Government, and if the defendant desires to produce evidence in a case, is



called evidence. That is the way facts are made known to you, and this term evidence can be described in a number of ways.

In the first place, it can be described to you quantitatively and qualitatively, according to the nature of the evidence and according to the weight that is necessary.

The qualitative description and requirement is that the evidence be credible evidence. That means believable evidence. The **quantitative** amount, the amount of proof necessary is called beyond a reasonable doubt and that term is defined as follows:

A reasonable doubt means a doubt that is based on reason and must be substantial rather than a speculative doubt. It must be sufficient to cause a reasonably prudent person to hesitate to act in the more important affairs of his life.

Evidence is also subdivided sometimes in the following fashion:

First, the testimony of witnesses who come here and under oath tell you what they know and what they learn by the use of their senses. They ordinarily do not give opinions. There is an exception and when we come to the handwriting expert, he is an exception.



It also includes any natural inferences that flow from the testimony and it includes also anything that is brought out on cross-examination of a witness.

In describing evidence in this fashion, the next subdivision would be the exhibits in the case, and there are some, and those are for your consideration and they will be sent into the jury room if you request it.

Thirdly, there is what is called stipulations and you heard some stipulations during the course of this trial. The one that comes to mind first is the one about the fact that there is no dispute between the parties that this bank was in fact covered by the Federal Deposit Insurance Corporation.

There is another stipulation and other concessions, for example, Mr. Lipson conceded that the handwriting expert was an expert in the area in which he was testifying; so that is also evidence.

Many things in the case concern the concept of another way of defining evidence and this is, direct evidence and circumstantial evidence. Some people have the idea that the only way you can prove anything is that there should be direct evidence. The most outstanding example of that I guess was St. Thomas when he wanted to put his hand in to see himself. He wouldn't accept



2 circumstantial evidence in the case, but before we get  
3 to that aspect of it, I would like to define what we  
4 mean by direct evidence and circumstantial evidence.

5 A defendant may be proved guilty by either  
6 direct or circumstantial evidence. Direct evidence  
7 is the testimony of one who asserts actual knowledge  
8 of a fact such as an eyewitness. Circumstantial evidence  
9 is proof of a chain of facts and circumstances indicating  
10 the guilt or the innocence of the defendant.

11 The law makes no distinction between the  
12 weight to be given to either direct or circumstantial  
13 evidence. It requires only that you, after weighing  
14 all the evidence, must be convinced of the guilt of the  
15 defendant beyond a reasonable doubt before he may be  
16 convicted.

17 Circumstantial evidence will be concerned in  
18 your appraisal of the fingerprint or prints that were  
19 on that camera. For example, suppose you were to go to  
20 bed at night and there wan't any snow on the ground and  
21 when you came home you observed none. You went to bed,  
22 you got up the next morning. When you come out there is  
23 a foot of snow outside. Would you say then that you  
24 could not testify that it had snowed that night because  
25 you didn't see it, you didn't have direct evidence of the

2 snow fall by seeing the flakes fall? Or will you say that  
3 the circumstances were such that you had a perfectly  
4 valid right to conclude that it had snowed during the  
5 night?

6 Another example of that is the story we read  
7 when we were children written by Defoe, Robinson Crusoe.  
8 He was on an island for some time, he got to know all  
9 the animals and I guess Rex Harrison got to talk to them  
10 after a while, but in any event, he got to know them,  
11 their footprints, fingerprints -- not fingerprints, but  
12 one fine morning he got up and decided there was another  
13 person on the island, Friday. He didn't see him,  
14 he didn't have any direct evidence that Friday was there,  
15 but he saw footprints in the sand. On the  
16 basis of circumstantial evidence, he decided in his own  
17 mind there was another person on the island with him.

18 So you see, in circumstantial evidence you  
19 have to analyze all the pieces of evidence, not only as  
20 to numbers, but as to quality and mainly as to quality,  
21 the make a determination whether the circumstantial evi-  
22 dence is sufficient to convince you of the point being  
23 made in the particular area.

24 Now, it is important to know what is not  
25 evidence in order to use only evidence in coming to your



2 determination and, as I have already suggested to you a  
3 number of times, the indictment is not evidence. The  
4 evidence you heard here in the courtroom. If there were  
5 any questions that were asked to which objection was made  
6 and I did not allow any answer, you can't speculate upon  
7 what the answer would be, nor is anything that was said  
8 in the question evidence, because that is not proof.  
9 The proof is the answer, not the question.

10 If any matter was stricken from the record  
11 by the Court and you were told to disregard, you should  
12 disregard it because that is not evidence either.

13 I asked a few questions here and there during  
14 the course of this trial. You are not to assume that I  
15 have any opinion as to the guilt or innocence of the  
16 defendant or the truth or falsity of any of the charges.  
17 As I have indicated to you, I occasionally asked some  
18 questions. You are not to attribute any greater signifi-  
19 cance to any of these questions asked by me. The only  
20 objective I had in asking such questions was to try and  
21 clear up whatever was before the jury at that time and  
22 I did not intend to convey any opinion to the jury as  
23 to my own feeling in the matter because very frankly at  
24 this point in time, being a judge now for my 28th year,  
25 I know that I do not form any judgment until I hear what



2 your judgment is, because there is no requirement for  
3 me to do it and I don't do it. It is easier for me to  
4 operate that way, so it is your headache, as President  
5 Truman used to say, the buck stops there, not here.

6 How do we evaluate the evidence, and this is  
7 a critical part of the case, because this is your main  
8 function, you are the one that is going to make this  
9 judgment.

10 The first is you observe the demeanor of the  
11 witness as he testified and size him up the way you would  
12 in your everyday life in matters of regular importance  
13 to you. The one thing you don't do; there are a lot of  
14 times many of the things that affect us are don'ts. If  
15 you recall when Moses got the tablets, there wasn't one  
16 do, they were all don'ts. Don't, don't, don't, don't and  
17 the don't here is that you don't leave your common sense  
18 outside of the jury room. You bring your common sense  
19 into the jury room and you use it to determine whether  
20 you find the facts to be in the case.

21 In determining a witness' credibility, you  
22 look into their interest. The two bank employees are,  
23 of course, employed by the bank. The FBI man is a federal  
24 employee and in analyzing their testimony you look into  
25 their background. If you find any witness has falsely



1 testified to any material fact, you must disregard that  
2 portion of the testimony which you believe to be false,  
3 but you may accept the rest, or you may disregard the  
4 witness' entire testimony.  
5

6 The defendant did not take the stand in this  
7 case, but I explained to you before, he has a perfect  
8 right to do that. This is no requirement upon him to  
9 take the stand and the fact he does not take the stand,  
10 from that fact you may not presume or infer there is  
11 guilt on his part. He has a perfect right to exercise  
12 that privilege not to take the stand.

13 The question of identification in this case,  
14 as the lawyers have indicated to you, both sides, the  
15 evidence in this case raises the question whether this  
16 defendant was in fact one of the criminals at the bank  
17 at the time and therefore requires you to resolve certain  
18 questions in this area.

19 You are to keep in mind that the burden of  
20 proof is on the Government with regard to every element  
21 of the crime charged and that this burden includes the  
22 burden of proving beyond a reasonable doubt the identity  
23 of that third person that was under the camera in the bank  
24 at that time.

25 The question of the exception to the one



1 subdivision that I told you evidence could be divided  
2 into a witness who gives an opinion. Ordinarily witnesses  
3 don't give opinion, but when there are witnesses who are  
4 trained and who from experience and study and background  
5 know more about a certain subject matter than you possibly  
6 could know or the Court, they are called in to assist  
7 us and there are a number of things you must find before  
8 you can accept that testimony.  
9

10 First you must find that the person is and  
11 possesses knowledge in that area that makes him an expert,  
12 and here, of course, Mr. Lipson has conceded for the  
13 purpose of this trial alone that this particular witness  
14 is an expert in this area.

15 Secondly, you must be satisfied that the facts  
16 upon which he bases his judgment coincide with yours and  
17 he has told you what those facts are. He has given you  
18 those points of similarity. I think they ran to 12 or  
19 so, I don't recall, and he has prepared these charts and  
20 you can look at them.

21 Lastly, as far as this expert is concerned, this  
22 is not conclusive upon you. You may accept or re-  
23 ject his testimony. This is advisory in nature. It is  
24 a judgment for you to make.

25 I will now define some of the terms I spoke



about while I was going through the various counts so you understand what they are and what their meaning is in law. Some of them have an everyday meaning and I see no need to define those.

Violence, for example, you know what that is and you know what some of these other terms used -- possession, for example. You know what it means for somebody to have custody, care, possession. That concept I am sure you understand.

There are three words used in each of the indictments which are unlawful, knowing and willful; saying that the defendant acted in that fashion and you see count number 1, that is a requirement that you have to be satisfied that the defendant did act unlawfully, knowingly and willfully.

Unlawful means against the law and the particular law we are talking about at this point is 2113, whatever subdivision you are considering at the time. The prohibition of robbing a bank which is insured by the Federal Deposit Insurance Corporation. That is the law we are talking about.

Knowing means that the act which is being done is being done voluntarily and purposely and not because of mistake or accident, and this knowledge may be proved



by the defendant's conduct and by all the facts and circumstances surrounding the case.

The word willful as used means that the act was committed by the defendant voluntarily, with knowledge that it was prohibited by law and with the purpose of violating the law and it was not done by mistake, accident or in good faith.

Possession, while an understandable term, requires some explanation, a short explanation. Possession doesn't depend upon ownership. For example, I physically possess this glass at this time, but it is not my glass, it is Uncle Sam's. I think it is, unless they got it from the cafeteria; then it might be from Shorham. But in any event, I have possession but I don't own it. I could have possession of this glass alone, or I can have possession with someone else.

For example, if my clerk, who is my right hand, Mr. Benaducci gets a call from me while I am inside and I say to him, "Would you go out and get that glass for me, I want to get a drink." When he picks up the glass he has possession, but I also have possession.

Another concept of possession is what is called constructive possession. The ability to exercise dominion and control over something. When I say to Mr.



2 Benaducci to go get that glass, I have the power to do  
3 that and while I don't physically have the glass, I have  
4 the power to exercise him to get that glass which means  
5 I have dominion and power.

6 No official in the bank has the money in his  
7 hand. The teller may have it, but the bank is comprised  
8 of the teller, the various other people in the bank, so  
9 when they have possession of it, the bank also has  
10 constructive possession of it, so when the term possession  
11 is used in one of these counts, we are talking about that  
12 concept.

13 The word assault is used, and I think you  
14 know from the terrible conditions we have in the city,  
15 especially with some of our elderly people, that there is  
16 an awful lot of assault around and I think you must be in  
17 some way aware of what assault is, but I will define it  
18 for you so you will know what the legal definition is.

19 Assault is an unlawful attempt or a threat to  
20 apply force and violence to inflict bodily harm. When the  
21 attempt or threat is coupled with an apparent present  
22 ability to carry it out, such as to arouse fear in the  
23 intended threatened victim that he or she would be the sub-  
24 ject of an immediate physical injury. The assault may  
25 be committed without actually touching or striking or



1 doing bodily harm to another person; so that  
2 essentially is what an assault is. There must be a  
3 present ability to do harm.  
4

5 For example, it would not be an assault if I  
6 got on the telephone and called somebody on the west  
7 coast and said I am going to beat you up because the  
8 fellow in the west coast knowing you are calling from  
9 New York knows you can't beat him up, but these fellows  
10 were in a small contained area and one of them had a  
11 gun.

12 Intimidation comes from a Latin word which  
13 defines itself and means to put in fear. That is all  
14 intimidation means when it is used in the statute.

15 Now, we get down to the indictment, and I  
16 have put the various elements on the board and as far  
17 as the first count is concerned, we will go through those.  
18 The first element there, you see it over on the left,  
19 this occurrence must have happened on or about January 16,  
20 1975. You must be satisfied of that beyond a reasonable  
21 doubt. There doesn't seem to be any dispute about  
22 that.

23 In any event, it says on or about, so if it  
24 is a day before or a day after, it would not make any  
25 difference.



1  
2 The occurrence occurred at the North New  
3 York Savings Bank up in the Bronx and you have heard the  
4 evidence as to that and you have heard also the concession  
5 made by Mr. Lipson that this was a bank insured by the  
6 Federal Deposit Insurance Corporation. So that the first  
7 element you must be satisfied with is to count 1, beyond  
8 a reasonable doubt.

9 The second element is, on that particular  
10 date the money was taken from the bank drawer and that  
11 money was either in the care, custody, control, manage-  
12 ment or possession of the bank and I think Mr. Lipson  
13 during his argument said there is no question about that,  
14 but in any event, you have to find that is an element  
15 before you may convict him.

16 The third was that the defendant took the  
17 money from the person or presence of one or more persons  
18 other than the defendant.

19 In order for you to make a finding there, you  
20 do not have to find that he literally went over and took  
21 the money for himself, because of this fact: Where two  
22 or more persons are charged with the commission of a  
23 crime, the guilt of one defendant may be established with-  
24 out proof that all the defendants perpetrated every act  
25 constituting the offense charged. In other words,



1  
2 take in this case, the one fellow was with the gun at  
3 some particular place, another fellow might have taken the  
4 money and the other fellow was standing guard at the  
5 door and tried to move the camera.

6 If you find they were in fact acting together,  
7 they don't have to commit all the acts necessary to  
8 establish the crime, because there is another law passed  
9 by Congress which is called Aiding and Abetting and that  
10 reads as follows:

11 "Whoever aids, abets, counsels, commands, induces  
12 or procures the commission of a crime is punishable as a  
13 principal." In order to aid or abet the commission of  
14 a crime, a person must associate himself with the criminal  
15 venture, participate in it and try to make it succeed.

16 If you find that was the case as far as  
17 this third element is concerned, you would then continue  
18 on to the fourth element and that fourth element is that  
19 the taking of the money was done with the use of force  
20 and violence and intimidation and that is a judgment you  
21 will have to make as to whether the circumstances were  
22 such that these people were put in fear and intimidation  
23 and that force and violence were used.

24 Lastly, that the defendant acts unlawfully,  
25 knowingly and willfully, and I have already defined that



for you and if you find that the Government has proven these five elements by credible evidence beyond a reasonable doubt, then you should convict the defendant. On the other hand, if the Government has failed to prove any one or more or any of these elements, it is your obligation to acquit the defendant.

We now come to the second count. The first element is that it happened on January 16 and it is the same as the other element in the first count. The second one is that on or about the date, namely the 16th, the defendant took money from the bank which belonged to or was in the custody, care, management or possession of the bank and third, that the money was taken with intent to steal or purloin such money, and to steal, the ordinary use of stealing that we have in everyday life. Purloin is another word which practically means the same thing, so there must be a taking without the consent of the person who has possession or owns the money and lastly, that it exceeded \$100 and in this particular area, you have a concession that the audit shows it was whatever it was.

Then we come to the last count and as I told you before, we do not go into the last count unless you find the defendant guilty beyond a reasonable doubt of



1 either count 1 or count 2 or both.  
2

3 In addition to finding he was guilty of  
4 count 1 or count 2 or both, you must find that in doing  
5 so he, or those present with him, assaulted one or more than  
6 one person or by the use of dangerous weapons or weapon,  
7 and in this case there was mention of only one weapon, and  
8 that put in jeopardy the lives of one or more persons,  
9 and if you find those elements by credible evidence  
10 beyond a reasonable doubt, then you find that the  
11 defendant is guilty of that charge and, on the other  
12 hand, if you find that the Government has failed to prove  
13 any of the elements of this charge, then of course you  
14 would find the defendant not guilty.

15 What do we mean to put in jeopardy the life  
16 of a person by a dangerous weapon? A dangerous weapon  
17 includes anything capable of being operated, manipulated,  
18 wielded or otherwise used by anyone or more persons to  
19 inflict severe bodily harm or injury upon another person,  
20 so obviously a firearm such as a pistol, capable of  
21 firing a bullet or other ammunition may be found to be a  
22 dangerous weapon or device.

23 To put in jeopardy the life of a person by  
24 use of a dangerous weapon means to **expose** such a person  
25 to the risk of death or the fear of death by the use of



2 such a dangerous eapon.

3           There is no obligation, however, on the  
4 Government's part and there is no proof here to show that  
5 this gun was loaded, because when somebody points a gun  
6 at you, you don't know whether it is loaded or not, so  
7 your feeling, the normal person's feeling would be such  
8 as would put the fear of jeopardy of his life in his  
9 mind.

10           In the course of this trial, I allowed, and I  
11 exercised my judgment and find it to be the law that  
12 the second incident was allowable because of certain  
13 reasons which I will tell you in a second, but I want  
14 you, and I apply the same stricture to you that the lawyers  
15 have, particularly Mr. Lipson. We are not, and I underline  
16 not, trying this defendant for a robbery which is alleged  
17 to have occurred in April of 1975 when the police officer  
18 was on line. We are not saying because if you find so,  
19 that this man was there and did that at the time, he  
20 probably did this. That is not the reason for which  
21 that evidence was allowed.

22           In the course of the trial, as I have just  
23 indicated, you heard about a bank robbery on April 3,  
24 1975, which it is alleged Mr. Mauldin committed. Mr.  
25 Mauldin is not on trial here for that robbery and you



2 must not convict him here merely because you believe  
3 he may have participated in that robbery, nor may you  
4 conclude that because he may have participated in the  
5 April 3rd robbery, that he has a criminal character or  
6 a propensity to commit such crime. The law forbids any  
7 such conclusion.

8 You may consider the evidence concerning the  
9 April 3 bank robbery for the limited purpose of deciding  
10 whether Mr. Mauldin was the third man in the robbery which  
11 is the subject matter of this case.

12 In this regard you may examine the facts of  
13 April 3rd for the purpose of determining if they are  
14 sufficiently similar to those of the robbery charged in  
15 this indictment so as to assist you in identifying the  
16 man who participated in the robbery charged here.

17 Subject to the limitations which I have noted,  
18 the weight, if any, to be given to the evidence of the  
19 April 3rd robbery in determining the question of identity  
20 is entirely up to you and you may, if you so choose,  
21 entirely disregard that later incident.

22 Sympathy and bias have no place in this case.  
23 You recall I carefully asked all of you whether you had  
24 any untoward incident or any relative been the subject  
25 of a crime because I didn't want anybody to come in here



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2 and feel unknown to themselves sometimes, subliminally  
3 as the psychology people put it, that you would be prejudiced  
4 against him, but on the other hand, I don't want anybody  
5 to come in here and say where there is smoke, there is  
6 fire or something like that and just because they have  
7 feelings in other areas, say we are going to find him  
8 guilty. That is not the way to do it.

9 The way to do it is to apply the law as I  
10 have given it to you and let the chips fall where they  
11 may. For example, as far as punishment is concerned,  
12 that is no concern of the jury. A very logical matter  
13 or proposition is, how can it possibly help you find the  
14 facts. Punishment has nothing to do with helping  
15 you find the facts, therefore you may not discuss the  
16 question of punishment. Punishment, if indeed it be-  
17 comes necessary, will be a function of the Court and  
18 exercised by the judge.

19 Madam Forelady, the possible verdicts in this  
20 case are three. As to count 1 -- I will give you the  
21 indictment to help you.

22 As to count 1, the possible verdict is either  
23 guilty or not guilty. The same thing with respect to  
24 count 2 and count 3.

25 I at one time had a jury and it was quite a



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2 long case and the jury went out and they were out for a  
3 couple of hours and I sent them out to lunch and late  
4 in the afternoon, not a peep, nothing at all. I called  
5 the jury in and asked, "What is happening?"

6 They said, "Nothing."

7 I said, "What do you mean, nothing?"

8 They said, "You told us not to discuss the  
9 case."

10 That is at an end. From this point on you  
11 discuss the case and as Mr. Lipson said, if you have any  
12 dispute about the testimony, our very able court reporter  
13 will read the testimony to you.

14 If there is any occasion for you to consult  
15 with the Court, you will be given paper and envelopes and  
16 anyone of you can put a question, but they are channeled  
17 through the forelady. She puts the question down and  
18 signs her name and gives it to the marshal and he will  
19 give it to me, then I will answer it.

20 I have one last time when I talk to the  
21 lawyers and if you will excuse me at this time, I will  
22 have this last talk with them. Then we will continue  
23 on.

24 (At the side bar as follows:)

25 MR. LIPSON: Your Honor, I would request your



2 Honor include in your charge an explanation of the  
3 deliberation process and the fact that the verdict must  
4 be a verdict that reflects the individual conscience of  
5 each juror.

6 THE COURT: I also forgot to tell them it  
7 should be unanimous, so I will do that, now that you  
8 bring it to my mind.

9 MR. LIPSON: Also, I don't think it makes  
10 much difference in this case but it is my understanding  
11 that there is a requirement that the defendant to have  
12 acted unlawfully, willfully, applies to all three counts.

13 THE COURT: I will tell them it applies to  
14 all three counts.

15 MR. LIPSON: I would like to note my objection  
16 to the illustration that your Honor used to point out  
17 what circumstantial evidence is. Your Honor used the  
18 illustration of the footprints. I think it focuses the  
19 jury on the Government's argument with respect to the  
20 fingerprint and it tends to sluff over which is a major  
21 question, the inability of the Government to establish  
22 when the fingerprints were put on the camera. I think  
23 the use of that illustration in this case was prejudicial  
24 to the defendant.

25 THE COURT: Your objection is noted, but I said



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nothing about footprints.

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MR. LIPSON: You spoke of the footprint of the man on Robinson Crusoe's island.

5

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THE COURT: You are talking about the footprint in the sand. Okay.

7

8

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10

MR. LIPSON: I would like to note an objection to your Honor's reference to the terrible conditions in New York City concerning the assault, especially on elderly people.

11

12

13

Insofar as your Honor's charge on the failure of the defendant to take the stand departed from my request, I would like to have an exception noted.

14

15

THE COURT: How did I depart from it?

You have an exception.

16

17

18

MR. LIPSON: Your Honor will charge on the deliberation process and the fact their verdict has to reflect the individual conscious verdict?

19

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MR. EPSTEIN: Your Honor, I think you made this fairly clear, but I want to be sure. With regard to count 3, the assault count, it is not necessary that they find the defendant himself carried a gun or assaulted anyone. The Government is only charging him with an aider or abettor.



2 THE COURT: I intended to convey. If that is  
3 so, I will indicate that.

4 As I have it, their verdict must be unanimous  
5 and it is to be their individual verdict and that  
6 unlawful, knowing and willful is to three counts and  
7 count 3, he is not being charged with having the gun in  
8 his possession but that he aided or abetted.

9 MR. LIPSON: With respect to the deliberations,  
10 I would want your Honor to include the fact they should  
11 consider each other's opinions but they are not to  
12 surrender a conscientious --

13 THE COURT: You are asking a pre Allen  
14 charge.

15 I will go into the area, but I will not use  
16 your exact language. Then you can take an exception if  
17 you don't think I covered it.

18 (In open court.)

19 THE COURT: In reference to your verdict, I  
20 think you are aware of this, but out of a superabundance  
21 of caution I will repeat it. It must be unanimous. I  
22 think I told you that once before. Not at this time, but  
23 during the course of the trial, but it must be a unanimous  
24 verdict and that verdict must be based upon your own  
25 findings and your own feeling and your own conscience and



1 you don't just go along with somebody else because they  
2 say I think this, that or the other thing. You are to  
3 use your own judgment and this is to be your own verdict.  
4

5 As far as the three counts are concerned,  
6 that fifth element which is in number 1, in all of these  
7 three counts the defendant must act unlawfully, knowingly  
8 and willfully. If he did this through innocence or mis-  
9 take or some other reason, he could not be guilty of these  
10 crimes, so he has to have acted.

11 As far as count 3 is concerned, when I talked  
12 about the gun being present, it is not necessary for  
13 him to have the gun if you find beyond a reasonable doubt  
14 that somebody else of the three of them had a gun and that  
15 he aided and abetted during the course of the crime.  
16 That would be sufficient, and that, of course, must all  
17 be beyond a reasonable doubt.

18 Miss Sterling, I want to thank you very much  
19 for having served and we appreciate your being here.  
20 The statute requires me to excuse you at this time. I  
21 do so with the thanks of the Court.

22 (Alternate juror excused.)

23 (Marshal sworn.)

24 (At 12:10 p.m. the jury began its deliberations.)

25 (12:20 p.m. a note was received from the jury



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2 and marked Court's Exhibit 1.)

3 (In open court; jury not present.)

4 THE COURT: I don't think there is any dis-  
5 pute about any of these. What they are asking for is  
6 the evidence which I presume they mean the exhibits  
7 rather than listening to the reporter read it and the black-  
8 board, in light of the defense of this case being the  
9 issue was the identification? It tracks the indictment.  
10 It is almost the same as the indictment.

11 MR. LIPSON: Your Honor, I would have no  
12 objection to the blackboard going in if it went in with  
13 a cautionary instruction that it is just a summary of  
14 what you said and if they have any questions about de-  
15 tails, they should ask to have the specific part of the  
16 charge read back.

17 THE COURT: The last thing is the indictment  
18 which I think the U. S. attorney has a clean copy.

19 MR. EPSTEIN: It has been furnished.

20 THE CLERK: It was sent in.

21 MR. LIPSON: He is not present. They brought  
22 him back upstairs.

23 THE COURT: We will wait for the defendant.

24 (Pause.)

25 MR. EPSTEIN: Your Honor, Mr. Lipson suggested



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and I agreed that the stipulations in evidence not be sent into the jury. If you can, instruct them that they are in evidence if they want to see them.

THE COURT: What is the other one besides the FDIC?

MR. EPSTEIN: That this fingerprint card contains Mr. Mauldin's fingerprints.

(Jury present.)

THE COURT: The Court has a note from the jury which reads:

"The jury would like all the evidence and the blackboard put in the jury room. Also the indictment papers."

I think you got the indictment paper, haven't you?

As far as the blackboard is concerned, we will have that put in the jury room, but all that is is a synopsis of what I told you and if there is any particular part of it that you wanted explained legally or otherwise, I will be glad to do it, so just ask.

The last thing is the evidence. The evidence in the case we are going to send in to you, the ones that were marked.

There were two stipulations, you will recall,



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2 that are not being sent in because they are very simple.

3 This first stipulation is that the bank was  
4 insured by the Federal Deposit Insurance Corporation and  
5 the other stipulation is that the inked fingerprints that  
6 the expert was talking about are in fact the defendant's  
7 fingerprints, but outside of that you have everything  
8 else.

9 Is that what you asked for?

10 It will be sent in to you.

11 (Jury leaves the courtroom.)

12 MR. LIPSON: Your Honor. one thing I guess I  
13 should say on the record.

14 When Exhibit 6 was offered in evidence, it  
15 was admitted with the understanding that the top part of  
16 the card would be covered over. Upon looking at the  
17 card I find nothing in it that is objectionable so I  
18 agree at this time that Exhibit 6 should be deemed to  
19 include the entire card and I have no objection to the  
20 entire card.

21 THE COURT: That is fair enough.

22 (Recess.)

23 (At 2:35 a note was received from the jury  
24 and marked Court's Exhibit 2.)

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25 THE COURT: The note reads:



2 "If we find the defendant guilty of one count  
3 or two counts or both, does count 3 automatically become  
4 a guilty charge?"

5 Bring in the jury.

6 (Jury present.)

7 THE COURT: I want to apologize for the delay  
8 but you see all these papers on the desk here, this is  
9 another case I am hearing while you are deliberating  
10 involving Mount Sinai Hospitals and some nurses up there.  
11 That is the reason why you had to wait a little while.

12 I have a note which reads:

13 "If we find the defendant guilty of one or  
14 two counts or both, does count 3 automatically become a  
15 guilty charge?"

16 The answer to that is no. If you find guilty  
17 in either the first count or the second count or both,  
18 in order to find the defendant guilty of count 3, you  
19 must first find that he committed the crime charged in  
20 count 1 or count 2 or both.

21 In addition to that, this is your question,  
22 this part of it.

23 You must find beyond a reasonable doubt that  
24 in doing so, either he or those present with him assaulted  
25 one or more persons or by the use of a dangerous weapon,



2 to wit, a gun, put in jeopardy the lives of one or more  
3 persons. He is not charged with using the gun himself.  
4 He is charged with aiding and abetting the person that did  
5 use the gun, and you will recall, the law as far as  
6 aiding or abetting states that whoever commits an offense  
7 against the United States or aids, abets, counsels, demands,  
8 produces or procures its commission or who willfully  
9 causes an act to be done which if directly performed by  
10 him or another would be an offense against the United  
11 States, is guilty of that crime.

12 In order for you to find that the defendant  
13 aided or abetted another in the commission of a crime,  
14 it is necessary to find that he acted knowingly and  
15 willfully, that he associated himself with the venture,  
16 that he did so knowing the essential elements thereof  
17 and was a willful participate in that act. One who  
18 aids and abets the commission of a crime is equally  
19 guilty with the person who actually and physically commits  
20 it.

21 You may retire.

22 (Jury leaves the courtroom.)

23 THE COURT: Are you still up before Judge  
24 McMahan, Mr. Lipson?

25 MR. LIPSON: Yes.



CERTIFICATE OF SERVICE

January 21, 1977

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Paul G. Gindberg